

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS**

Ft. Worth Division

ERGUN CANER, *
*
Plaintiff, *
*
v. * Civil Action No. 4:13-cv-00494 (Y)
*
JASON SMATHERS, *
*
Defendant. *
*
* * * * * * * * * * * * * * *

**DEFENDANT'S NUNC PRO TUNC MOTION FOR ENLARGEMENT OF TIME TO
FILE HIS REPLY IN SUPPORT OF HIS NUNC PRO TUNC MOTION FOR BRIEF
ENLARGEMENT OF TIME TO FILE HIS PETITION FOR ATTORNEYS' FEES**

NOW COMES Defendant Jason Smathers to respectfully move the Court to extend his filing deadline for his Reply in Support of His *Nunc Pro Tunc* Motion for Brief Enlargement of Time to File His Petition for Attorneys' Fees, Dkt. #57, by one day and one minute until 12:01 AM on 7 June 2014.

Smathers requests this extension due to excusable neglect. His Petition for Attorneys' Fees was due on 1 May 2014, but he filed it at 1:02 AM CDT on 2 May 2014, along with a Motion for Enlargement of Time explaining why the petition was filed late. (*See* Def.'s *Nunc Pro Tunc* Mot. Brief Enlargement of Time to File Pet. Att'ys' Fees, Dkt. #57 (filed May 2, 2014).) Even though Smathers' Enlargement Motion was filed on 2 May 2014, making Plaintiff's Opposition to that Motion due 23 May 2014, Plaintiff briefly stated his opposition to Smathers' extension request as part his Opposition to Smathers' Fee Petition, which he filed at 11:27 PM on 22 May 2014, causing an email to be sent to the undersigned, which was dated 23

May 2014 because of the time zone difference.¹ When the undersigned saw this email on the morning of 23 May 2014 (since he was asleep by the time it was sent), he wrongly assumed that Plaintiff's Opposition had been filed on that day and frankly did not think to examine the *time* the email was sent that closely.² Accordingly, he did not change his calendar, which still read that his Reply supporting his Enlargement Motion would be due 6 June 2014. He did not notice the oversight until 6 June 2014, when he was working on Smathers' Reply. He completed his Reply supporting his Enlargement Motion on 6 June 2014 and began filing it that day, but did not complete the filing process until 12:01 AM on 7 June 2014. That document, which was docketed as Dkt. #61, was unfiled by the Clerk on this Court's Order on 11 June 2014, pending resolution of Smathers' second request for an extension for his Reply supporting his Fee Petition, Dkt. #60.

Upon reviewing the record, the undersigned realized that while he intended for Dkt. #60 to apply to *both* Smathers' Reply supporting his Fee Petition *and* his Reply supporting his original extension request, he inadvertently neglected to state as much in the Motion itself. Accordingly, in light of the fact that the extension request docketed as Dkt. #60 technically only applies to Smathers' Reply supporting his Fee Petition, Smathers is filing this separate Motion for a corresponding extension regarding his Reply supporting his original Enlargement Motion. The undersigned apologizes for the oversight.

¹ Additionally, Plaintiff's Opposition only mentioned Smathers' extension request in passing and was simply entitled "Plaintiff's Response to Docket #54—Jason Smathers's Motion for Attorney Fees."

² This oversight was exacerbated by the fact that 23 May 2014 was the Friday before Memorial Day weekend and the undersigned was not working that day.

Because Smathers already filed the document for which he seeks an extension, but that document was unfiled by Court Order, he stands ready to refile it upon a favorable resolution of this Motion by the Court.

As indicated above, Smathers requested a brief extension for his Fee Petition and a separate extension for his Reply supporting that Fee Petition, neither of which has been adjudicated. He has not requested any previous extensions for this filing. Plaintiff's counsel advises that Plaintiff opposes any extensions. A proposed Order consistent with the relief sought also accompanies this Motion.

Date: June 12, 2014

Respectfully submitted,

/s/ Kelly B. McClanahan
Kelly B. McClanahan, Esq.
N.D. Tex. Bar #984704DC
National Security Counselors
1200 South Courthouse Road
Suite 124
Arlington, VA 22204
301-728-5908
240-681-2189 fax
Kel@NationalSecurityLaw.org

Counsel for Defendant